IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 240 of 2003
With
COMPANY PETITION No. 312 of 2003
With
COMPANY PETITION No. 160 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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HARSHATEX CHEM PVT. LTD. - Petitioner(s)
Versus
PUSHPA SYNTHETIC PVT. LTD. - Respondent(s)

==========**Appearance :**

MR BP GUPTA for Petitioner No(s).: 1.
MRS SWATI SOPARKAR for Respondent No(s).: 1.
MR HARSHIT S TOLIA for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 24/08/2005
COMMON ORAL JUDGMENT

1. Company Petition No.240/2003 is filed by the petitioner viz., M/s. Harshatex Chem Pvt. Ltd., against the respondent company viz., Pushpa Synthetic Pvt. Ltd., U/S. 433 and 434 of the Companies Act, 1956 for winding up of the respondent company on the ground that the respondent company has failed to discharge its liabilities towards the petitioner.

2. Similarly, Company Petition No.312/2003 is filed by Voratex Chemicals for recovery of its dues amounting to Rs.9,50,040/- (Rupees Nine Lacs fifty thousand forty) together with interest at the rate of 25% per annum, from the respondent Company.

3. Similarly, Company Petition No.160/2004 is filed by M/s. Polydye Center for recovery of its dues amounting to Rs.8,30,400/- (Rupees eight lacs thirty thousand four hundred) along with interest at the rate of 18% per annum, from the respondent Company.

4.Since all these three petitions are filed by the different petitioning creditors against the same Company, they are being disposed of by this common judgment.

5. Company Petition No.240/2003 was admitted by this Court and order of advertisement was passed on 4.7.2005. Pursuant to the said order of admission and advertisement, necessary advertisements have appeared in the two newspapers as directed by this Court and affidavit of advertisement was filed before the Court on 11th August, 2005 along with which relevant newspaper cuttings were attached. Pursuant to the said order of advertisement, several creditors of the company have filed their affidavits in support of the winding up petition. These affidavits along with all necessary documents are placed on record.

6. In Company Petition No. 240/2003, affidavit-in-reply was filed on behalf of the respondent company to which the petitioner has also filed affidavit-in-rejoinder. Affidavit-in-reply was filed in Company Petition No.312/2003 to which the affidavit-in-rejoinder was filed by the petitioner.

7. In Company Petition Nos.240/2003 and 160/2004, Mr. B.P. Gupta, learned Counsel appears on behalf of the petitioners whereas in Company Petition No.312/2003, Mr. Ravi Karnavat, learned advocate appears on behalf of petitioner. Mr. Hasit Tolia, learned advocate appears on behalf of respondent company in Company Petition No.312/2003 and Company Petition No.240/2003. However, he has not filed his appearance on behalf of the respondent company in Company Petition No.160/2004, despite service of notice. Since Company Petition No.240/2003 has already been admitted and advertised, no separate order of advertisement was passed in Company Petition No.312/2003 &Company Petition No. 160 of 2004.

8. For the sake of convenience, the facts are taken from Company Petition No.240/2003.

8.1. It the is case of the petitioner that the petitioner has issued invoices from 1.11.2000 to 21.5.2001 and the amount outstanding towards all these invoices was Rs.3,48,080/-. Towards these outstanding dues, the respondent company has issued various cheques from 6.1.2003 to 9.4.2003 and the amount of the said cheques were to the tune of Rs.2,56,100/-. The petitioner has annexed detailed statement of the said cheques along with petition. The said cheques were presented by the petitioner on their respective due dates. However, the said cheques were dishonoured by the Bank. It is further stated that the amount of Rs.5,87,280/- was due and payable by the respondent company to the petitioner and the amount of Rs.1,75,000/- was payable towards interest as per the terms and conditions. The petitioner, therefore, issued statutory notice on 4.6.2003 calling upon the respondent company to make the payment of the outstanding amount and instead of making the payment, the respondent company gave evasive reply and since the payment was not made, the present petition was filed by the petitioner against the respondent company.

8.2. Mr. Gupta, learned advocate appearing for the petitioner has submitted that the respondent company has failed and neglected to make the payment of the outstanding dues of the petitioner. He has further submitted that the Directors of the respondent company, with a view to defraud the creditors are very seriously trying to dispose of machinery, land, building and other fixed assets. He has further submitted that the manufacturing activity of the respondent company has already come to a grinding halt and the respondent Company is trying to encash the assets by selling at throwaway price. It is further submitted that if the respondent company is permitted to sell the assets of the Company, the public at large will be affected and creditors will be left with hue and cry. He has further submitted that the respondent company is making very heavy losses and is not able to make payment of its dues to various parties and, therefore, it would be just and equitable that the respondent company be wound up in the interest of public at large.

9. An affidavit-in-reply is filed on behalf of the respondent company. It is stated therein that the petition is misconceived and it is presented ostensibly for a winding up order but really to exercise pressure and therefore it is required to be dismissed. It is further stated that the respondent company is a going / running concern and about 400 workers are working in the company. It is further submitted that the company petition is nothing but a pressurizing tactic to obtain payment of dues which is rather disputed and there are so many disputes in the petition. It is further submitted that the petitioner has referred to and relied upon some terms of agreement. He has further submitted that the dispute with regard to the recovery of dues by the petitioner is concerned, the petitioner has the civil remedy of approaching the competent Civil Court by filing a civil suit and for this purpose, the winding up petition filed by the petitioner is not maintainable. The reliance is placed on the decision of **Navjivan Trading Finance P. Ltd.** Reported in **(1978) 48 Comp. Cases 402**, **Airwings (P) Ltd. Vs. Viktorial Air Cargo** reported in **(1991) (1) Comp. L.J. 233**, **Tata Iron and Steel Company Ltd., Vs. Micro Forge (India) Ltd.,**reported in **2000(2) GLR 1594.** It is, therefore, submitted that there is no substance in the present winding up petition and hence, it deserves to be dismissed.

10. By way of affidavit-in-rejoinder, Mr. Gupta has submitted that the dues of the petitioner is genuine and there is no bonafide dispute. The respondent company has issued 46 cheques in favour of the petitioner company and the said cheques were dishonoured. It is further submitted that looking to the profit and loss account of the respondent company for the year ending 31st March, 2002, it is clear that there is a loss of about Rs.11 lacs and the total turn over was only about Rs.2 crores. It is further stated that the profit and loss account for the year ending on 31st March 2003 would have been ready and available to the respondent company but the same are not produced before this Court as there are heavy losses during the year ending on 31st March, 2003. It is clear that the financial substratum of the respondent company has gone down and the company is not solvent at all.

11. After the order of advertisement, affidavit in Company Petition No.240/2003 was filed by Mr. Bhagavat M. Patel on 16thAugust, 2005 wherein it is stated that the respondent company has already closed down its business at the factory premises in which it used to operate. It is, therefore, stated in the said affidavit that it is not in the interest of the creditors of the respondent company to allow the respondent company to function and it was just, necessary and expedient for protecting interest of the creditors to pass an order for winding up of the respondent company. An additional affidavit was also filed by the said Mr. Bhagavat M. Patel on 17thAugust, 2005, wherein it is stated that the pending the winding up petition before this Court, the respondent company has transferred its properties which is void U/S. 536(2) of the Act. Similar affidavits were filed by Mr. Sanjay Bhatt on behalf of I.P.B. Enterprise and D.M. Trading Co., by Mr. S.D. Vimawala on behalf of Darshan Textile, by Mr. S.C. Halari on behalf of Neha Enterprise, by Mr. Bansidhar Dalal on behalf of Vinus Traders, by Mr. Deepak Bhatt on behalf of I.B.P. Colour Company, by Mr. Sanjay Bhatt on behalf of Gayatri Corporation, by Mr. Ambrish Valia on behalf of Sandorang Enterprise, by Mr. Bhupendra Manubhai Amin on behalf of Ambika Industries and Amar Trading Company, by Mr. Hasmukh G. Patel on behalf of Patel Textile and Patel Associates, by Ms. Anjana H. Patel on behalf of Patel &Co., by one Partner on behalf of Krishna Traders.

12. After having heard the learned advocates appearing for the respective parties and after having gone through the pleadings as contained in the memo of petition, affidavit-in-reply as well as affidavit-in-rejoinder and supporting affidavits filed by the various Creditors, the Court is of the view that the respondent company has lost its financial substratum and its business activities have been stopped. Even during the course of hearing, Mr. Tolia has produced a letter dated 11.7.2005 written by the two Directors of the Company to him wherein it is specifically stated that after taking into consideration the relevant facts and after giving the initial thoughts towards this aspect, the Company has to give the consent for passing the winding up order against the Company. This letter is produced on record. In this view of the matter, no further evidence is required and the Court has come to the conclusion that the respondent Company is unable to pay to all Creditors their respective dues. The Company is closed and it is not in the interest of any one to allow the Company to function. The respondent is, therefore, ordered to be wound up. The Official Liquidator attached to this Court is appointed as the Liquidator of the respondent Company. He is directed to take charge of the assets of the respondent Company. While taking charge of the assets of the company, he may issue necessary intimation to the secured creditors and Ex-Directors of the Company. He is further directed that before appointing Security Agency and/or Valuer for taking inventory, he should take prior permission of this Court. He is further directed to invite claims from the Workers as well as Creditors.

13. Subject to the aforesaid direction, this winding up petition is accordingly disposed of.

14. In view of the winding up order passed by this Court in Company Petition No.240/2003, it is not necessary to pass separate winding up orders in Company Petition No.312/2003 and Company Petition No.160/2004. Both these petitions are also disposed of accordingly.
15. Copy of this order be kept in Company Petition No. 312 of 2003 and Company Petition No. 160 of 2004.

[K.A.PUJ, J.]

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